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26
27 **UNITED STATES DISTRICT COURT**

28 **DISTRICT OF NEVADA**

SHUFFLE MASTER, INC., a Nevada
corporation,

Plaintiff,

v.

VENDINGDATA CORPORATION, a Nevada
corporation,

Defendant.

Case No. 2:04-CV-1373-BES-(LRL)

VENDINGDATA'S EMERGENCY
MOTION TO STAY RULE 54
PROCEEDINGS PENDING APPEAL

VendingData Corporation ("VendingData") (now known as Elixir Gaming Technologies Inc.), by counsel, hereby moves to stay the Rule 54 proceedings pending the outcome of Shuffle

1 Master's appeal to the Federal Circuit Court of Appeals. In support of its motion, VendingData
2 states as follows:

3 1. On February 1, 2008, this Court entered an order granting VendingData's motion
4 for summary judgment and denying Shuffle Master's cross-motion for summary judgment. The
5 Court's order disposed of the entirety of Shuffle Master's Complaint in this case.

6 2. Consistent with the time limitations set forth in Rule 54, Federal Rules of Civil
7 Procedure, and Local Rule 54, VendingData filed on February 15, 2008 its "Rule 54 Motion For
8 Attorney Fees and Costs Under 35 U.S.C. § 285." (See Doc. 203, and supporting papers).

9 3. Shuffle Master then filed on February 29, 2008 its Notice of Appeal to the United
10 States Court of Appeals For The Federal Circuit. Shuffle Master's Notice of Appeal stated that
11 Shuffle Master is appealing from: a) this Court's summary judgment order entered February 1,
12 2008; b) this Court's order entered February 28, 2007 adopting the Magistrate Judge's Report
13 and Recommendation Regarding Claim Construction; c) this Court's February 4, 2008 Order
14 Denying As Moot Shuffle Master's Motion To Compel Deposition Testimony And For
15 Sanctions; d) this Court's February 4, 2008 Order Denying Shuffle Master's Motion To Compel
16 Responses To Shuffle Master's Second Set of Interrogatories; e) this Court's February 1, 2008
17 Order Denying Shuffle Master's Objections To Magistrate Judge Leavitt's May 23, 2007 Order
18 Staying Discovery; and f) "all orders and rulings made appealable thereby." (See Doc. 208).
19 The Federal Circuit docketed Shuffle Master's appeal on March 11, 2008.

20 3. On March 17, 2008, Shuffle Master filed with this Court its response to Vending
21 Data's Rule 54 Motion. Shuffle Master's Response consists of several hundred pages, including
22 a 31 page brief, appendices, declarations, documents, an audio CD, a video DVD, etc.

23 4. Judicial economy compels the conclusion that the Rule 54 proceedings pending
24 before this Court should be stayed pending Shuffle Master's appeal. Shuffle Master's appeal, if
25 entirely successful for Shuffle Master, will moot VendingData's Rule 54 motion. Neither this
26 Court nor the parties should undertake the effort of resolving the issues raised by the Rule 54
27 motion if that effort might be for naught as a result of Shuffle Master's appeal.

5. Faced with simultaneously pending Rule 54 motions and appeals, other district courts have followed the sound practice of exercising their discretion to stay the Rule 54 proceedings pending the outcome of an appeal that could affect the basis for the Rule 54 motion. *See e.g., Medtronic Navigation, Inc. v. Brainlab Medizinische Computer Systems GmbH*, 2008 U.S. Dist. LEXIS 13483 (D. Col., Feb. 12, 2008) (attached hereto as Ex. A).

6. VendingData's counsel has communicated with Shuffle Master's counsel regarding this request for stay. Shuffle Master's counsel has declined to consent. VendingData's reply brief in support of its Rule 54 motion presently is due on March 31, 2008. Accordingly, VendingData requests that this Court stay the pending Rule 54 proceedings, including the time for filing VendingData's reply brief, until Shuffle Master's appeal is concluded.

Respectfully submitted,

VENDINGDATA CORPORATION
(now known as Elixir Gaming Technologies, Inc.)

Dated: March 25, 2008

By: /s/
One of their attorneys

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that service of **VENDINGDATA'S**
MOTION TO STAY RULE 54 PROCEEDINGS PENDING APPEAL was made this date by
electronic service and by depositing a copy for mailing, first class mail, postage prepaid, at Las
Vegas, Nevada, to the following:

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DATED this 25th day of March, 2008

/s/
Jennifer Bryan